IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.210 OF 1996

The State of Maharashtra).. Appellant
(Orig.Complt.)

Vs.

1. Shripati Govinda Varape)
2. Krishna Dattu Varape)
3. Bajirao Shripati Varape)
4. Shahaji Dattu Varape).. Respondents.
(Orig.Accd.Nos.
1 to 4)

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Mr. A.S. Shitole, APP for the State.

Mr. Niteen Pradhan, Advocate for Respondents.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATE : 28TH JUNE, 2005.

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Taking exception to acquittal of the respondents for offences of murder, inflicting grievous and simple hurts and provocation to commit breach of public peace punishable under sections 302, 326 323 and 504 read with section 34 of the Penal Code, the State has appealed.

2. The facts which led to the prosecution of respondents are as under: -

3. Ramchandra Sawant and his sons jointly cultivate land at a place known as Darewadi within the precincts of village Kotoli, Taluka Panhala, District : Kolhapur. The land bearing Gat No. 1047 has some other sharers in addition to Ramchandra's

family. Adjacent land Gat No. 684 also has five sharers. Share of one Pandit Ganpati Mane was purchased by Pandurang son of Ramchandra alongwith Dattu Varape father of accused No.2 - Krishna about three years prior to the incident.

4. On 27/8/1991 Ramchandra's son Shamrao had been to the share of land purchased from Mane. Accused Krishna, and Shahaji abused Shamrao, alleging that he was cutting grass from their share. Shamrao informed complainant Pandurang of the incident. On 28/8/1991, Shamrao accompanied by his father Ramchandra went to the said field purchased from Pandit Mane. At 7.45 a.m. complainant himself also went to the field. Four accused persons came there armed with sickles and obstructed Shamrao and father Ramchandra. They started abusing Shamrao and Ramchandra alleging that Shamrao was cutting grass from their share. Accused No. 4 - Shahaji gave a blow of sickle on the chest of Shamrao. Shamrao fell on ground. Ramchandra was behind Shamrao. Accused No. 1- Shripati, accused No.2 - Krishna and accused No.3 - Bajirao rushed towards Ramchandra and gave him blows by sickle. Pandurang himself rushed to the rescue of his father but accused Krishna and Bajirao stopped him and tried

to give a blow by sickle. Accused Bajirao started beating Pandurang from behind with cycle-chain. Pandurang's cries for help attracted farmers from adjacent land whereupon the accused persons fled.

5. Pandurang took both his brother Shamrao and father Ramchandra to hospital at Kolhapur. Shamrao was pronounced dead. A report was lodged with the police by Pandurang, whereupon an offence was registered. Police performed inquest on the body of Shamrao and sent it for post-mortem. They also got Ramchandra and Pandurang medically examined for their injuries. Police drew a spot panchnama, seized articles lying on the spot and arrested the accused persons. Clothes on the person of accused were seized and two sickles which had been concealed by accused Shripati in groundnut crop were seized at Shripati's instance. Blood samples were taken. Property seized and the samples were sent to Forensic Science Laboratory. Upon receipt of report from the Forensic Science Laboratory chargesheet was sent to the learned J.M.F.C., who committed the case to Court of Sessions at Kolhapur.

6. The learned Additional Sessions Judge to whom the case was assigned charged the accused of offences

punishable under section 302, 326, 323 and 504 read with section 34 of the Penal Code. The accused pleaded not guilty to the said charges and claimed to be tried. The prosecution examined as many as 13 witnesses in its attempt to bring home the guilt of the accused. The learned Additional Sessions Judge examined the accused under section 313 Cr.P.C. The defence of the accused was that the complainant and his family members themselves unauthorizedly cut the grass from the land of accused and came to the land armed with sickles, cycle-chain, sticks etc. The complainant's family members themselves led the assault in respect of which a report had been made by accused Shripati to police station Panhala whereupon Crime No.91/99 had been registered. They denied that they assaulted complainant or his brother or father. After hearing the arguments advanced the learned Additional Sessions Judge came to conclude that the prosecution had failed to bring home guilt of the accused. He, therefore, proceeded to acquit the accused of all the charges levelled. Aggrieved thereby, the State has preferred this appeal.

7. We have heard the learned Additional Prosecutor for the State and learned Counsel for respondents. It was stated at bar that the counter

case filed at the instance of the accused resulted in acquittal. The defence taken would show that the involvement of accused persons in the incident is not in dispute. All that has therefore, to be found out is whether the learned Additional Sessions Judge erred in concluding that the prosecution failed to prove the guilt of respondents before us.

8. The learned Additional Public Prosecutor submitted that in this case there were as many as four eye-witnesses stating that the accused launched a murderous attack on Shamrao, Pandurang and Ramchandra. He submitted that the learned Trial Judge should not have discarded this eye-witness account, which was consistent, and pointed unmistakably to the guilt of accused.

9. Before examining the evidence of these eye-witnesses, it may be useful to first refer to evidence regarding death of Shamrao and injuries on Pandurang and Ramchandra. Inquest panchanama at Exhibit -20 admitted by the defence, shows that there was one injury on left hand side of the chest. P.W.6 - Dr. Aruna Bhirdi conducted post mortem examination and found that there was one stab injury on the left side of chest in the fourth intercostal space lateral

to nipple going forward and medially upto the lung and vessels, having the size of two and half inches by three-fourth inch. She found that the left lung was torn and about 2000CC blood was present in the thoracic cavity. In the post mortem notes at Exhibit - 34 proved by her she certified the cause of death to be haemorrhagic shock due to ante mortem injury to the left lung. She had stated that the injury was possible by article like article No.18 - sickle before the Court. In cross-examination she also admitted that the injury was possible if a person falls on sickle etc. This evidence would thus show that Shamrao had suffered only one blow of sickle or a sharp weapon which led to his death.

10. Ramchandra and Pandurang who had been injured in the attack were referred to Dr. Zunjarrao Patil - P.W. 12 for medical examination. Dr. Patil found that Pandurang had a contused abrasion with four chain marks over the back each measuring 12 cm.X 1 cm. There were four incised wounds on phalanges of middle, ring and index finger of left hand. All these injuries were simple. In addition there was a skin deep abrasion on the left leg. Dr. Patil proved certificate at Exhibit - 50.

11. Dr. Patil found vide Exhibit - 51 that Ramchandra had three incised wounds: one on left parietal region, and two on right and left thigh which were scalp/skin deep. According to Dr. Patil injury No.1 on Pandurang could have been caused by cycle-chain like article No.4 before the Court, whereas, other injuries could have been caused by sharp weapons like article 3, 5 and 7 before the Court. As for injuries on Ramchandra, Dr. Patil stated that they could be caused by any sickle before the Court. In course of cross-examination, Dr. Patil admitted that injuries on the left hand of Pandurang would have been caused by one blow by sickle or if the hand came in contact with sickle while cutting grass.

12. Apart from eye-witnesses examined, the prosecution examined one Niyaz Hamid Kazi to prove seizure of clothes from the accused and recovery of sickles at the instance of accused No. 1 - Shripati. The witness turned hostile. Therefore, the evidence of seizure of these articles has to come from P.W. 11 A.P.I. Kadam who stated that he seized clothes of accused under panchnama Exhibit - 13 and recovered two sickles at the instance of accused No.1 - Shripati vide panchnama at Exhibit 14. The panchnama of seizure of clothes of accused, as also the memorandum

and panchnama of discovery of sickles does not bear signature of the accused. In view of failure of independent Panch witness to support the version of P.W. 11 - API Kadam and in the absence of signatures

of accused these recoveries and seizures would lose their evidentiary value.

13. The other two Police Officers examined stated about registration of an offence and performing inquest and other steps in investigation.

14. We would now proceed to evaluate the evidence of eye-witnesses. P.W. 9 - Sarjerao states having merely witnessed a quarrel. P.W. 2 - Pandurang stated that he and Dattu Varape - father of accused No. 2 - Krishna had purchased share of land of Pandit Ganpati Mane. The incident occurred when Shamrao had been to the share purchased from Mane when the accused persons allegedly abused Shamrao. It thus, seems that the incident occurred on account of a dispute as to who owned or possessed the strip of land in question.

15. After the incident of abusing in the morning of 27/8/1991, on the next day Shamrao accompanied by father Ramchandra had gone to the said field.

Pandurang too had gone to the land at that time. The accused persons allegedly came by footpath, waylaid Shamrao and Ramchandra abused them and assaulted them. Accused No.4 - Shahaji gave a blow with sickle on the chest of Shamrao who fell on ground. Accused No.1 - Shripati, accused No.2 - Krishna and accused No.3 - Bajirao rushed towards Ramchandra. They gave blows by sickle on head, right thigh and left leg. P.W. - 2 Pandurang them claimed to have rushed to his father's rescue, when Krishna and Bajirao rushed towards him. He claims to have caught Krishna's sickle with left hand and in the process cut his fingers. He states that accused No.3 - Bajirao beat him with a bicycle-chain. His cries for help attracted adjacent land owners making the accused flee.

16. In cross-examination Pandurang admitted that before his purchasing the said land from Mane, Dattu Varape was cultivating the land for about 15 to 20 years as a tenant. He also admitted that the names of Dattu Varape and Dattu's brothers were recorded in the 7/12 extract and Varapes did not want Ramchandra's family to cut grass from their land. Thus, it has to be observed that the land in which incident took place was owned and possessed by Dattu Varape and not the complainant's family. It may, thus, be seen that

Pandurang, Ramchandra and Shamrao were possibly in the process of taking possession of the land from Dattu Varape's family.

17. Incident of abusing on the 27th August which preceded the assault on 28th August is significant. On 27th it was only Shamrao who had gone to the land. On 28th not only Shamrao but father Ramchandra and brother Pandurang also went to the said piece of land. This would indicate that Ramchandra's family had gone with requisite preparation to meet resistance, if any, from the family of Varapes. He admitted that after the incident of the previous day, he had not gone to house of accused to enquire as to why they had abused Shamrao. He admitted that neither he, nor his father or brother complained to the Police-Patil about the incident dated 27/8/1991.

18. The conduct of others who came to the spot, described by witness Pandurang also speaks volumes as to who was in the wrong box. In cross-examination he stated that his own brother Hapshya, cousin Ananda and Ananda's wife Akkatai came to the spot when accused were running but did not chase the accused and did not even talk to Pandurang or his father Ramchandra.

19. Though initially Pandurang denied that the accused were injured at the spot, he admitted that a chargesheet was filed against him and that his sickle and stick were seized from them in that case. He then admitted that accused too were injured and they were taken for treatment at Panhala. He denied the suggestion that when he, his father brother Ananda and Akkatai had gone out armed with sickles and sticks to the land to teach lesson to accused they were injured by their own weapons in course of fight. He denied that his brother Shamrao was armed with a cycle-chain.

20. The panchnama on spot at Exhibit - 24 shows that one sickle and one bicycle-chain was found at the spot among other things.

21. P.W.3 - Ananda-complainant’s cousin was also examined as an eye-witness. He stated that on the incidental day at about 7.00 a.m. when he was returning home with bundle of grass, he saw four accused persons quarrelling with Shamrao and Ramchandra. He claimed to have thrown the bundle of grass and went near them and saw accused No.4 gave a blow of sickle of which led to Shamrao’s fall. He stated that Ramchandra then came ahead and received two blows of sickle from Shripati. Thereafter,

according to him, Pandurang came, cried loudly and received a blow from one accused No.2 - Krishna's sickle. Accused No.3 - Bajirao then beat Pandurang with cycle-chain. This account of family members of Ramchandra coming one after the other to receive blows from the accused is not only incredible but different from the one which Pandurang himself had given. Witness Ananda stated that his brother Pandurang, brother - Vasant etc. came from the village and then all of them brought the injured to the village. Thus, while Ananda claims to have played a positive role of taking the injured to village Pandurang states in paragraph 14 of his deposition that Ananda did not even talk to him.

22. P.W. 3 - Ananda's cross-examination would throw a doubt about his version. He stated that he was about 500 ft. away when quarrel was going on and it took about 10 minutes to walk that distance after throwing bundle of grass. He admitted that he and his wife Akkatai were co-accused alongwith Pandurang in case of causing injuries to the accused persons and Manjulabai.

23. Evidence of P.W.5 - Sanjivani - wife of P.W. 2 - Pandurang would show that when she was on her way

to field she was informed about the quarrel and so proceeded to the land and found accused persons hitting Shamrao. She states that she does not know as to what happened thereafter as she felt giddy but she took a turn around and said that lateron she saw accused No.2 - Krishna and Bajirao beating her husband with a sickle and chain. In cross-examination she admitted that entire story about Shamrao and Ramchandra having proceeded to field at about 6.00 or 6.30 a.m. or Pandurang having gone to the field at about 8.00 or 8.30 a.m. or her having followed Pandurang at the half distance was not in her police statement and she could not give reason for the omission. She also admitted that her claim that she saw accused Nos. 2 and 3 beating was not in her statement recorded by the police. It is incredible that P.W. 5 - Sanjivani would see only blow by sickle on Shamrao and not notice anything else, as if the incident was taking place frame by frame when so many actors were at the spot.

24. P.W. 7 - Ramchandra stated that on 27th August his son Pandurang had informed him about attack in the field. He stated that the next day he and his son Shamrao went to the field. Accused persons rushed towards Shamrao. Scuffle ensued between Shamrao and

the accused persons. He gives a very curious account of the incident. He states that the parties engaged in the scuffle were lifting and dumping each other on the ground. It may be recalled that there are no injuries on Shamrao except one injury on chest. Had he been lifted and dumped some other injury like abrasion would have been noticed. This claim of lifting and dumping is not in police statement. He states that Shripati Chougule and Sarjerao Patil also came to the spot. Shripati Chougule and Sarjerao Patil separated the warring parties and told the persons engaged in fight not to quarrel.

25. Sarjerao is examined as P.W. - 9. He stated that when he went, the parties were merely abusing each other. If this was so and if Sarjerao had pacified the persons engaged in quarrel, when did the incident of assault on Shamrao take place?

26. It seems that P.W.7 - Ramchandra imaginatively added colours to the incident and stretched it substantially. He stated that after the parties were separated, he and Shamrao again entered the land of Varape when the four accused persons again rushed towards them and accused No.4 - Shahaji gave a blow of

sickle to Shamrao. Apart from the fact that this account of the incident is not only incredible but does not find corroboration from any other source, the account clearly indicates that Ramchandra and his sons had themselves invited trouble by entering the land again after the parties were pacified by Sarjerao. His cross examination exposed a number of improvements made by him over the story given by him before the police.

27. The complainant's family's repeated attempts to enter the land which was in the name and possession of the family of accused and complainant's family members going together to the field, presumably with the object of establishing possession, explains why did their story did not receive any independent corroboration from neighbouring field owners. Contradictions in their own stories make it difficult to hold as established that any of the accused persons were conclusively the authors of injuries on the persons of Pandurang Ramchandra or Shamrao. If a scuffle did take place, with everybody armed with sickle, the injury which punctured Shamrao's lung could have come from sickle in anybody's hand. Unless it is established by appropriate evidence that the sickle in question was in the hand of one of the

accused persons it would be difficult to fasten guilt on the accused.

28. The learned Additional Sessions Judge has considered the evidence adequately. He seems to have led a heavy stress of non-explanation of injuries on the person of accused. He seems to have observed that complainant and his witnesses were trying their best to suppress as to how the accused had sustained injuries indicating guilty conscious on the part of the complainant. While examining the evidence we have recounted circumstances which make it difficult to accept the prosecution evidence. In view of this, it cannot be said that the conclusions drawn by the learned Additional Sessions Judge are improbable or perverse. Consequently, it may not be permissible for us sitting in appeal to substitute any different findings for those recorded by the learned Additional Sessions Judge on a re-appreciation of evidence. Hence, we hold the appeal to be devoid of any merit and therefore dismiss it. Bail bonds, if any, furnished by the respondents shall stand cancelled.

(V.G.PALSHIKAR J)

(R.C.CHAVAN, J)